

Federal Deposit Insurance Corporation

§ 390.268

(i) The independent character of the letter of credit or approved undertaking should be apparent from its terms (such as terms that subject it to laws or rules providing for its independent character);

(ii) The letter of credit or approved undertaking should be limited in amount;

(iii) The letter of credit or approved undertaking should:

(A) Be limited in duration; or

(B) Permit the State savings association to terminate the letter of credit or approved undertaking, either on a periodic basis (consistent with the State savings association's ability to make any necessary credit assessments) or at will upon either notice or payment to the beneficiary; or

(C) Entitle the State savings association to cash collateral from the account party on demand (with a right to accelerate the customer's obligations, as appropriate); and

(iv) The State savings association either should be fully collateralized or have a post-honor right of reimbursement from its customer or from another issuer of a letter of credit or an independent undertaking. Alternatively, if the State savings association's undertaking is to purchase documents of title, securities, or other valuable documents, it should obtain a first priority right to realize on the documents if the State savings association is not otherwise to be reimbursed.

(2) *Additional considerations in special circumstances.* Certain letters of credit and approved undertakings require particular protections against credit, operational, and market risk:

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the State savings association should ensure that market fluctuations that affect the value of the item will not cause the State savings association to assume undue market risk;

(ii) In the event that the undertaking provides for automatic renewal, the terms for renewal should allow the State savings association to make any necessary credit assessment prior to renewal;

(iii) In the event that a State savings association issues an undertaking for

its own account, the underlying transaction for which it is issued must be within the State savings association's authority and comply with any safety and soundness requirements applicable to that transaction.

(3) *Operational expertise.* The State savings association should possess operational expertise that is commensurate with the sophistication of its letter of credit or independent undertaking activities.

(4) *Documentation.* The State savings association must accurately reflect its letters of credit or approved undertakings in its records, including any acceptance or deferred payment or other absolute obligation arising out of its contingent undertaking.

§ 390.268 Investment in State housing corporations.

(a) Any State savings association to the extent it has legal authority to do so, may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation; provided, that such obligations or loans are secured directly, or indirectly through a fiduciary, by a first lien on improved real estate which is insured under the National Housing Act, as amended, and that in the event of default, the holder of such obligations or loans has the right directly, or indirectly through a fiduciary, to subject to the satisfaction of such obligations or loans the real estate described in the first lien, or the insurance proceeds.

(b) Any State savings association that is adequately capitalized may, to the extent it has legal authority to do so, invest in obligations (including loans) of, or issued by, any state housing corporation incorporated in the state in which such State savings association has its home or a branch office; provided (except with respect to loans), that:

(1) The obligations are rated in one of the four highest grades as shown by the most recently published rating made of such obligations by a nationally recognized rating service; or

(2) The obligations, if not rated, are approved by the FDIC. The aggregate

§ 390.269

outstanding direct investment in obligations under paragraph (b) of this section shall not exceed the amount of the State savings association's total capital.

(c) Each state housing corporation in which a State savings association invests under the authority of paragraph (b) of this section shall agree, before accepting any such investment (including any loan or loan commitment), to make available at any time to the FDIC such information as the FDIC may consider to be necessary to ensure that investments are properly made under this section.

§ 390.269 Prohibition on loan procurement fees.

If you are a director, officer, or other natural person having the power to direct the management or policies of a State savings association, you must not receive, directly or indirectly, any commission, fee, or other compensation in connection with the procurement of any loan made by the State savings association or a subsidiary of the State savings association.

§ 390.270 Asset classification.

(a)(1) Each State savings association must evaluate and classify its assets on a regular basis in a manner consistent with, or reconcilable to, the asset classification system used by the FDIC.

(2) In connection with the examination of a State savings association or its affiliates, the FDIC examiners may identify problem assets and classify them, if appropriate. The association must recognize such examiner classifications in its subsequent reports to the FDIC.

(b) Based on the evaluation and classification of its assets, each State savings association shall establish adequate valuation allowances or charge-offs, as appropriate, consistent with generally accepted accounting principles and the practices of the federal banking agencies.

§ 390.271 Records for lending transactions.

In establishing and maintaining its records pursuant to § 390.350, each State savings association should establish

12 CFR Ch. III (1–1–13 Edition)

and maintain loan documentation practices that:

(a) Ensure that the institution can make an informed lending decision and can assess risk on an ongoing basis;

(b) Identify the purpose and all sources of repayment for each loan, and assess the ability of the borrower(s) and any guarantor(s) to repay the indebtedness in a timely manner;

(c) Ensure that any claims against a borrower, guarantor, security holders, and collateral are legally enforceable;

(d) Demonstrate appropriate administration and monitoring of its loans; and

(e) Take into account the size and complexity of its loans.

§ 390.272 Re-evaluation of real estate owned.

A State savings association shall appraise each parcel of real estate owned at the earlier of in-substance foreclosure or at the time of the State savings association's acquisition of such property, and at such times thereafter as dictated by prudent management policy; such appraisals shall be consistent with the requirements of subpart X of this part. The appropriate regional director or his or her designee may require subsequent appraisals if, in his or her discretion, such subsequent appraisal is necessary under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this subpart. A dated, signed copy of each report of appraisal made pursuant to any provisions of this subpart shall be retained in the State savings association's records.

Subpart Q—Definitions for Regulations Affecting All State Savings Associations

§ 390.280 When do the definitions in this subpart apply?

The definitions in this subpart apply throughout parts 390 and 391, unless another definition is specifically provided.